

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Eastern District of Texas	
Name (under which you were convicted): Paul E. Thomas		Docket or Case No.: 16-40930	
Place of Confinement: U.S.P Beaumont P.O. Box26030 Beaumont Texas 77720		Prisoner No.: 13602-078	
UNITED STATES OF AMERICA		Movant (include name under which convicted) V. Paul E. Thomas	

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging: _____
United States District Court Eastern District of Texas
Tyler Division

 (b) Criminal docket or case number (if you know): 6;07cr90(02)

2. (a) Date of the judgment of conviction (if you know): unknown
 (b) Date of sentencing: unknown

3. Length of sentence: 1,392 months

4. Nature of crime (all counts): count 1 conspiracy to commit bank robbery
count 2,5,8,12,&16 bank robbery counts 3,4,6,7,9,10,11,13,14,
15,17,&18 use and carrying a firearm during a crime of violence

5. (a) What was your plea? (Check one)
 (1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
 (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to? n/a

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: United States Court of Appeals for the Fifth Circuit
- (b) Docket or case number (if you know): 09-40989
- (c) Result: affirmed
- (d) Date of result (if you know): 24 nov. 2010
- (e) Citation to the case (if you know): u. s. v. thomas, 627 f 3d. 146 (fifth circuit)
- (f) Grounds raised: UNKNOWN
- _____
- _____
- _____
- _____
- _____
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐
- If "Yes," answer the following:
- (1) Docket or case number (if you know): 10-9939
- (2) Result: deied
- _____
- (3) Date of result (if you know): 16 may 2011
- (4) Citation to the case (if you know): thomas v. usa, (no.109939 s ct 5-16-11
- (5) Grounds raised: don't know
- _____
- _____
- _____
- _____
- _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?
- Yes ☒ No ☐
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: united states district court for the eastern
district of texas, tyler division
- (2) Docket or case number (if you know): don't know
- (3) Date of filing (if you know): don't know

(4) Nature of the proceeding: 2255

(5) Grounds raised: UNKNOWN

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: denied

(8) Date of result (if you know): 2 oct. 2012

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: united states district court for the eastern district

(2) Docket of case number (if you know): don't know

(3) Date of filing (if you know): don't know

(4) Nature of the proceeding: 28 u.s.c. 2255 & 28 u.s.c. 2241

(5) Grounds raised: don't know

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐ No ☒

(7) Result: dismissed without prejudice

(8) Date of result (if you know): 24 nov. 2014

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

first petition, i did not appeal, i relied on the allyne case

second petition, i relied on the hughes to become retro and i

did not get permission from the fifth circuit

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: claim of actual innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE: memorandums, exhibits a&b , exhibits (1), (1) cont., & (2)

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue? n/a

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application? n/a

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application? n/a

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is “Yes,” did you raise the issue in the appeal? n/a

(6) If your answer to Question (c)(4) is “Yes,” state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue: n/a

GROUND TWO: n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue? ^{n/a}

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? n/a

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application? n/a

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application? n/a

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? n/a

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue: n/a

GROUND THREE: n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? n/aYes ☐ No ☐(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? n/aYes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/aName and location of the court where the motion or petition was filed: n/aDocket or case number (if you know): n/aDate of the court's decision: n/aResult (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application? n/aYes ☐ No ☐(4) Did you appeal from the denial of your motion, petition, or application? n/aYes ☐ No ☐(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? n/aYes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state: n/a

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue: n/a

GROUND FOUR: n/a

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue? n/a

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: n/a

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application? n/a

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application? n/a

Yes ☐

No ☐

(4) Did you appeal from the denial of your motion, petition, or application? n/a

Yes ☐

No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal? n/a

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise issue: n/a

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: n/a

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. n/a

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing: wayne dickey and ken hawk public defenders of
office 110 n. college street 1122 tyler tx. 75702

(b) At the arraignment and plea: same as above

(c) At the trial: same as above

(d) At sentencing: same as above

(e) On appeal: deborah race 6101 south broadway, suite 500 tyler tx.
75703

(f) In any post-conviction proceeding: n/a

(g) On appeal from any ruling against you in a post-conviction proceeding: n/a

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed: n/a

(c) Give the length of the other sentence: n/a

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

my motion has been filed timely

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: set aside the conviction and
grant an evidentiary hearing, so that petitioner can further prove
his actual innocence

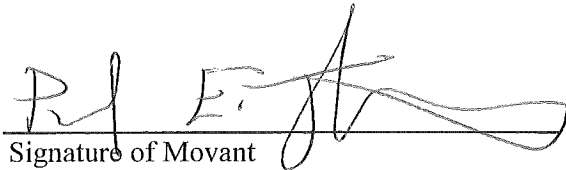
or any other relief to which movant may be entitled.

n/a

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion
under 28 U.S.C. § 2255 was placed in the prison mailing system on Aug. 30, 2016
(month, date, year)

Executed (signed) on 30 Aug 2016 (date)


Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

MEMORANDUM 1

Petitioner, is providing this court with evidence of his innocence, in the form of an "affidavit of confession" by the co defendant. The affidavit is support of petitioner's claim of actual innocence, also an affidavit from myself in support to help prove my actual innocence. Petitioner, retrieved the affidavit from the codefendant as "newly discovered evidence," in which was not in petitioner's possession or available to petitioner before or at the time of his trial. An affidavit or affidavits are a tool for correctness, petitioner furthermore provides this court with a statement of facts. That during petitioner's trial it was revealed that the government did not or failed to process the firearms for latent prints that would have proved petitioner's innocence. Had not for the negligence of the government's actions, the latent print process would have proved petitioner's innocence. Petitioner's due process rights was deprived and the rights were so infringed, and was very vital to petitioner's defense. All the information provided and presented to this court should be viewed as facts of evidence. Petitioner has proved that he had no knowledge of the offenses that he has been convicted of, nor had he had knowledge or possession of the firearms in which he was convicted of. Petitioner believes he has overcome his burden of proving his innocence, which warrants relief that is appropriate from this court. A factfinder would find it very debatable, based on all the information that has been provided with this motion. A prior statement was made by an eye witness by the name of

MEMORANDUM CONT.

Peggy Patrick, the eye witness gave discrete discription of the robber suspect but she was never contacted or interviewed by my trial attorney. Pettioner was arrested two weeks after the citizen nat. bank robbery, at the time petitioner's height and weight was recorded at the county jail. Petitioner's height was recored at 5ft.tall and 11inches, weight was 205 pounds. Peggy patrick was present at the time of the robbery and she gave a decrete discription of the robber suspect. She stated in a prior statement that the robber suspect was 6ft. 5inches tall and talle she also gave a discription of the suspects weight stating that he weighd 250 lbs. .Mrs. Patrick was an extreme potential trial witness for my defense, this evidence was kept from the jury. Though this is not an ineffectivness of counsel motion, petitioner is only displaying clarity for this court to view my claim with clear understanding. Though my trial attorney had an obligation to contact witnesses that i discussed with him on multiple occsions. Another witness by the name of Tonya Hullet, provided information that was vital to my defense and now her information supports my claim of actual innocence. She stated that she had seen an sks assault rifle, aparka, and apair of boots that the robber was wearing in the servailence that she viewed by the government. This and alot more information pertaining to witness information was apart of the discovery pack that my trial attorney passed on to petitioner. All of the information i have provided proves my actual innocence as a whole. The Constitution of the United States gaurantee's petitioner due process.

Exhibit (A)

14.

(B)

"Eye Witness

CROCKETT POLICE DEPARTMENT

Handwritten Witness Statement

Complainant _____ Date of Statement 9-21-07
Witness Name Peggy Patrick DOB [REDACTED] Phone [REDACTED]
Driver's License # [REDACTED] Social Security # [REDACTED]
Home Address [REDACTED]
Relative's Address _____ Phone _____
Employment Citizen Nat' Bank Type of Work Banking
Work Address 1330 E Loop 304 Crockett Work Phone _____
Date & Time of Incident 4:30 Location _____
Suspect Name _____ Address _____
Description of Suspect: Hgt. 6.50 Wgt. 250 Eyes _____ Hair _____ Race _____ Gender _____
DOB _____ Shirt Black/Blue Pants _____ Hat Black Shoes LT Brown Sandals

Man 6ft 5in approx. maybe taller came in and said "Get Down + Stay Down". He walked over + pointed a gun large black hand gun at me. He had light brown strap sandals with white socks. I never saw the other guy.

Left in 99-98 Chev. Short base
Step side Gray truck.

Exhibit (b)

2L01FBTZ .QR.TXFBITY00
 FBI/352305MC8.PUR/C.ATN/SA DAVID MOHR.
 TEXAS DEPARTMENT OF PUBLIC SAFETY COMPUTERIZED CRIMINAL HISTORY

THE FOLLOWING RECORD PERTAINS TO DPS NUMBER/TX 04465469

NAME(S)

THOMAS, PAUL
 THOMAS, PAUL EDWARD (AKA)
 THOMAS, PAUL EDWARD JR (AKA)
 THOMAS, PAUL E (AKA)

FBI NUMBER
 352305MC8

DPS NUMBER
 TX 04465469

SOCIAL SECURITY
 461312016

DRIVERS LICENSE
 01323285 TX

ID NUMBER

SEX
 M

RACE
 B

SKIN TONE
 BLK

HEIGHT
 511

WEIGHT
 205

DATE OF BIRTH
 06-09-1967

HAIR COLOR
 XXX

EYE COLOR
 BRO

FINGERPRINT PATTERN
 PMCO17PMPDIPMPIPIPI

AFIS FINGERPRINT

RIDGE COUNT

PRIMARY CLASS

HENRY CLASS

17 M 32 - OOM
 I 24 - MII

CLW
 WWW

PLACE OF BIRTH
 TX

CITIZEN
 US

III CODE
 SINGLE-STATE

SCARS, MARKS, AND TATTOOS
 TAT L SHLD
 TAT R SHLD

ALIAS DOB
 06-04-1967

DNA
 N

DATE OF REPORT
 06-26-2007

ORIGINATION DATE
 03-12-1991

DATE OF LAST UPDATE
 10-06-2006

=====

EVENT CYCLE 1

ARREST DATE

01-11-1991

TYPE

ADULT

AGENCY

TX2120000 - SMITH CO SO TYLER

 TRACKING SUFFIX

*001

AFFIDAVIT

I Derrick Hodges Reg. No.14913-078,do attest and affirm under the penalty of perjury,that the following information is true and correct to the best of my knowledge.The information comes as a confession,i have not been threaten nor have i been offered any gifts,it is willfully and voluntary.The government presented evidence in the form of clothing garments that i was in complete possession and had complete knowledge of.The clothing garments were a t-shirt,and a pair of tennis shoes that were used in the 5 dec. 2005 tyler kelly federal credit union robbery.I had possession of the clothing before,during,and after the robbery,at no time did paul thomas have knowledge or possession of the clothing garments.The government also presented a single .380 live round as part of there evidence which also was a part of my possession.The government presented firearms as evidence inwhich i had complete knowledge and possession of.At no time did my codefendant paul thomas have in his possession the firearms that the government presented at trial for the 3 nov. 2006 robbery at bank of america in henderson texas.Paul,Paul thomas had no knowledge of the robbery and did not participate in any of the robberies that he is currently convicted of.An associate of mine from the marshall texas area,welwere the only persons that had knowledge and possession of the firearms that were presented at my trial.The government also presented dna evidence from the 22 jun 2007 robbery of the austin bank in troupe texas.Asingle head of hair was extracted from a hat that was left in a getaway vehicle.The government used mitochondria dna (he knew that my codefendant and i share the same mother parent,but my codefendant and i have a different father parent).Two facts that the government did not do,(1)test my dna to the head of hair fragment and (2)use nucleolus dna testing. The testing would have proved that the hair fragment belonged to me,my codefendant never had the hat in his possession at anytime.

AFFIDAVIT (cont.)

I had property as well as access to my codefendant's residence and storage units and i often occupied the properties. The government found a few small bills of u.s. currency at my codefendant's residence, that i had given my neice and nephews for helping wash my truck. I then told them to go and put there money in there bedroom, in which they did, the government also confiscated a few u.s. bills from a storage unit that i had placed there. My codefendant did not have knowledge nor did he have possession of those u.s. currency bills at anytime. The currency was from citizen nat. bank of crockett in crockett texas. The government also presented a box of .32 round of ammunition that was in my possession at the storage unit. At no time did my codefendant have the box of ammunition in his possession at anytime nor did he have knowledge of the ammunition. The box of .32 round has never been at paul thomas's residence. Though my trial attorney did not advice me to testify or admit my guilt previously, i am at this time. My codefendant paul thomas did not have any involvement in the robberies in which he has been convicted of, he is innocent. If it becomes neccessary, i will testify in an open court for the defense of paul thomas.

ANYTHING FURTHER, I SAYTH NOT,

Taken, Sworn, Subscribed before me this 4 day of Feb
sign: E.C. Valdez
date: 2/4/16

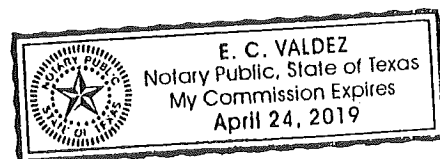


Derrick V. Hodges

Sworn to and Subsribed before me this day of

NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES:

April 24, 2019



AFFIDAVIT

I Paul Thomas 13602-078, do attest and affirm under penalty of perjury, that all of the information is true and correct to the best of my knowledge. I have not been threaten nor have i been offered any gifts, for this my information. I had no knowledge of any of the robberies inwhich i have been convicted of. At no time did i posse the firearms nor did i have knowledge of the firearms the government presented at my trial. The government also presented a box of .32 round ammunition at my trial that i have never been in possession of, rather it been my residence at 1424 southridge tyler texas or my persons. My trial attorney illadvised me to testify in my behave. The government also presented dna from a hat that was confiscated from one of the crime scenes, the government used mitochondria dna testing. My codefendant and i share the same mother (parent), the government intentionally neglected to test my codefendant as well as use nucleus dna testing because he knew that the dna would test positive to my codefendant. I did not conspire nor did i participate in any of the robberies.

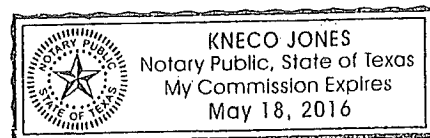
ANYTHING FURTHER, I SAYETH NOT,

Taken, Sworn, Subscribed before me this 11 day of JAN. 2016

sign Paul E. Thomas
PAUL E. THOMAS

Sworn to and Subscribed before me this 11th day of JAN. 2016

Notary Public ID# 12899328-6
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES:



RELIEF

Petitioner praise that this court will grant the appropriate relief ,based on petitioner's constitutional rights. An evidentiary hearing if it is neccessary to further rpove my actual innocence.

CERTIFICATE OF SERVICE

Thereby certify that on the 30day of Aug. 2016 a true and correct copy of this motion was mailed to:

THE UNITED STATES DISTRICT COURT
OF THE EASTERN DISTRICT OF TEXAS
TYLER, DIVISION

211 w. ferguson tyler texas 75702
room 106

Paul E. Thomas

sign:

date: 30 Aug. 2016

A handwritten signature in dark ink, appearing to read "Paul E. Thomas", with a long, sweeping horizontal stroke extending to the right.

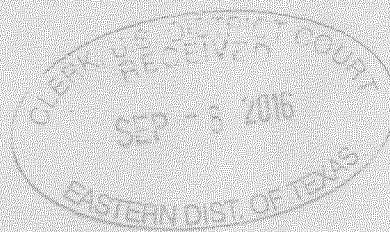
PAUL E. THOMAS 13602-078

USP Beaumont

P.O. Box 2603

Beaumont Tx. 77720

EB-4092



⇌ 13602-078 ⇌

Clerk U S District Court
211 W Ferguson ST
106 Federal Bldg.
Tyler, TX 75702
United States